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First Step: Show Commitment to Enforcing Existing Laws

Necessary Conditions for Immigration Reform

Executive Summary

- The federal government has failed in its basic duty to secure and protect its borders and to enforce immigration laws in the nation's interior.
- As a result, many Americans are increasingly cynical about the willingness — or ability — of the government to live up to its enforcement obligations and uphold the Rule of Law.
- These enforcement failures have enabled the illegal alien population in the United States to grow to at least 11 million people.
- The effects of this failure are dramatic:
 - Our lengthy border with Mexico provides an ideal avenue for terrorists to enter the United States.
 - Illegal aliens entering the nation through the southern border are disrupting essential military training programs.
 - The southern border remains a haven for drug, weapons, and human trafficking, as well as the accompanying violent criminal activity.
 - The steady flow of mostly unregulated border traffic is creating extensive environmental damage in sensitive lands.
 - Taxpayers throughout the nation are burdened with high public costs due to illegal immigration — including \$1.45 billion in emergency care delivered to illegal aliens.
- The federal government should address these challenges by (1) making a greater financial commitment to border security; (2) demonstrating through resources and effort that it intends to enforce immigration laws in the interior; (3) demanding better cooperation from the Mexican government; and (4) compensating states and localities for the financial burdens that illegal immigration places on their communities.
- If Congress and the Administration do not demonstrate a genuine commitment to securing our nation's borders and proving that our immigration laws will be enforced, it will be very difficult to develop the political consensus for temporary worker or comprehensive immigration reform, and such an effort would be a practical failure.

Introduction

The federal government's failure to enforce existing immigration laws has resulted in a crisis on our southern border and growing disrespect for our immigration laws throughout the nation. The impact of this phenomenon is woefully misunderstood and underestimated.

For decades, but especially in recent years, the federal government has failed in its basic law enforcement obligations on our borders and in the nation's interior. Administrations and Congresses led by both political parties have not provided adequate resources to uphold the law, and the result has been a growing — and false — perception that the borders cannot be controlled and that the United States is impotent in the face of illegal immigration. The result has been devastating: breakdowns in national security, exorbitant financial costs to local, state, and national governments, and a decline in respect for the Rule of Law and the ability — and willingness — of government to protect it.

While these border-security and immigration-enforcement concerns have begun to be addressed, ideas about reforming the nation's immigration laws and creating a "temporary worker" program to meet labor needs simultaneously have been proposed. Given labor needs, the inadequacy of existing "temporary worker" laws, and the resulting attraction of hiring illegal immigrants, Congress should consider the appropriate reforms that will enhance labor supply and eliminate the incentive for illegal immigration. It goes without saying that the United States should continue to be a welcoming nation to immigrants who follow the rules to become residents and citizens — just as it always has.

Realistically, before any significant immigration reform or temporary worker program will be supported, the federal government must demonstrate that the days of lax enforcement of immigration laws are behind us. The government must make a genuine commitment to securing our nation's borders and enforcing our nation's immigration laws — at the border and throughout the nation. That commitment is essential to the preservation of the Rule of Law; and without it, significant immigration reform is doomed to practical and political failure.

A Brief Overview of the Perils of Inadequate Enforcement

Our nation's borders, especially its southern border with Mexico, continue to see a steady number of foreigners (mostly, but not exclusively Mexicans) entering the United States illegally. Reliable estimates of illegal border crossings are difficult to come by, but the Department of Homeland Security states that it *apprehended* more than 1.1 million persons attempting to enter the United States illegally in FY 2004.¹ And a recent report concludes that there are approximately 11 million illegal aliens living in the United States today.² This level of illegal border activity and the numbers of illegal immigrants living in the United States present a series of challenges that policymakers must acknowledge and confront. A few of those challenges are identified below.

¹ The vast majority of these apprehensions were along the southern border with Mexico. Data from Customs and Border Protection (CBP), Dep't of Homeland Security, on file with the Senate Republican Policy Committee.

² See Jeffrey S. Passel, *Estimates of the Size and Characteristics of the Undocumented Population*, Pew Hispanic Center, Mar. 21, 2005, available at <http://pewhispanic.org/files/reports/44.pdf>.

The Terrorist Threat Posed by Unregulated Borders

Our extensive, largely unprotected border with Mexico provides an ideal avenue for terrorists to enter the United States. We have attempted to make it more difficult for terrorists to enter the United States legally (as the September 11 terrorists did) and we know that international terrorists adapt and change tactics.³ Where the borders of the United States remain porous and unregulated, it would be unsurprising to learn that terrorists had taken advantage of those gaps in order to gain illegal entry or smuggle weapons or dangerous materials into the nation. For 2004, the Border Patrol estimates that 75,000 illegal immigrant apprehensions involved persons from countries other than Mexico, including, for example, countries with ties to terrorism such as Syria, Pakistan, Saudi Arabia, and Iran.⁴ And the 9/11 Commission voiced strong concerns that terrorists use human smuggling networks along the U.S.-Mexico border to evade detection.⁵

A recent example illustrates the concern as to the terrorist threat. In March 2005, a Michigan man named Mahmoud Youssef Kourani was convicted of providing material support to the foreign terrorist organization Hezbollah. Kourani entered the United States by bribing a Mexican consular official in Beirut, traveling to Mexico, and then paying a smuggler to bring him across the U.S.-Mexico border.⁶ Unregulated borders put all Americans at risk when people like Mr. Kourani can gain entry to the United States.

The Ongoing Disruption of U.S. Military Training Programs

National security is also threatened when illegal entrants interfere with United States military operations. This is precisely what is happening at places like the Barry M. Goldwater Range (formerly the Luke Air Force Range) in southwest Arizona. The Goldwater Range “serves the U.S. Air Force and the U.S. Marine Corps as an armament and high-hazard testing area; a training area for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and a place to develop equipment and tactics.”⁷ The U.S. military uses this range in particular to prepare personnel for conditions similar to those in Iraq.

This crucial training at the Goldwater Range has been disrupted, however, by illegal immigrants who enter along its 37-mile border with Mexico. As a result, the military must conduct electronic surveillance and operational sweeps of the training areas before firing “hot” rounds or dropping simulated bombs, and they must stop their training exercises when it is necessary to apprehend aliens who could be injured. According to the Marine Corps, for just the western portion of the Range – in 2004 alone – 2,200 aliens were apprehended on or near the range, forcing it to close the range 400 times and lose 1,100 hours of operation. The number of encounters with illegal aliens has increased dramatically in the first three months of 2005, with approximately 1,400 aliens apprehended.⁸

³ See comments of Secretary of State Condoleezza Rice in State Department, *Rice With Mexican Foreign Secretary Ernesto Derbez*, Mar. 10, 2005.

⁴ Data on OTM (“Other Than Mexican”) illegal entries from U.S. Customs and Border Protection for FY 2004.

⁵ The 9/11 Commission Report, July 2004, at 384.

⁶ David Shepardson, *Dearborn resident helped terror group*, The Detroit News, Mar. 2, 2005.

⁷ For more information on the Goldwater Range, see <http://www.globalsecurity.org/military/facility/goldwater.htm>.

⁸ Communications to Senator Jon Kyl on file with the Senate Republican Policy Committee.

Cross-Border Smuggling

During a recent meeting with Mexican President Vicente Fox, President Bush asked: “How do we make sure those crossing the border are not terrorists, or drug runners, or gun runners, or smugglers?”⁹ It is a good question. Drug seizures alone on the U.S.-Mexico border are substantial. In FY 2004, for example, the Department of Homeland Security seized 353,302 pounds of marijuana, 4,777 pounds of cocaine, and 1,525 pounds of heroin just in the Tucson/Yuma sectors.¹⁰ These seizures, although higher than in past years, are but a fraction of the overall drug quantities being smuggled into the nation. Nor is the problem limited to drugs alone. An unregulated border is an opportunity for exploitation by smugglers of all kinds — drugs, weapons, and humans.¹¹

Environmental Damage to the Border Areas

Another effect of unregulated border areas is the injury to environmentally sensitive areas. Illegal entrants seldom follow established roads. As hundreds of thousands of people cross the border through southern deserts each year, they create serious environmental damage by trampling sensitive lands, leaving landscapes strewn with trash and abandoned vehicles, and damaging private property. For example, environmental experts from the Tohono O’odham Indian reservation in Southern Arizona have found that illegal aliens traveling across their land leave behind *six tons* of trash every day.¹² In addition, military officials at the Marine Corps Air Station in Yuma, Arizona, report that illegal alien traffic through the base has damaged the wildlife habitat for the flat-tailed horned lizard and the endangered Sonoran pronghorn, each of which is protected by the Marine Corps and other federal agencies.¹³ Fences are cut, water facilities broken, and livestock are scattered on ranches near the border.

Criminal Activity and Illegal Immigrant Deaths in the Border Areas

One of the tragedies of illegal immigration is the resulting widespread criminal abuse of illegal aliens themselves. Many of those seeking to enter pay large sums of money to human smugglers who help them navigate border areas, and those smugglers engage in extensive criminality to preserve their “business.” These human smugglers fight amongst themselves for control of their “property” and also frequently abuse the illegal aliens who have paid them.¹⁴ The State Department recently reported that some of the people engaging in this exploitation and abuse (including rape and murder) have worked in concert with the Mexican government itself.¹⁵ Illegal entry into the United States is big business operating outside the law, and so, just as with

⁹ George W. Bush, press conference transcript, Mar. 23, 2005, available at <http://www.whitehouse.gov/news/releases/2005/03/20050323-5.html>.

¹⁰ Fact Sheet on the Arizona Border Control Initiative, Department of Homeland Security, Sept. 21, 2004, available at http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0520.xml.

¹¹ See also James C. McKinley, Jr., *At Mexican Border, Tunnels, Vile River, Rusty Fence*, N.Y. Times, Mar. 23, 2005 (“‘You have this gaping hole that could be used for anything,’ said Michael Unzueta, the acting special agent in charge of the San Diego Office of Immigration and Customs Enforcement”).

¹² See Testimony of Ned Norris, Jr., Vice Chairman of the Tohono O’odham Nation-Arizona, before a Senate Commerce Committee Hearing on S. 2295, the “Border Infrastructure and Technology Act,” on June 17, 2004.

¹³ Communications from military officials at Goldwater Range to the office of Senator Jon Kyl. On file with the Senate Republican Policy Committee.

¹⁴ See, for example, discussion of highway shootouts and other violence due to smuggler rivalries in David L. Teibel, *New federal, state, local unit will try to stem incidents like I-10 gunfight*, Tucson Citizen, Nov. 6, 2003.

¹⁵ See “Mexico: Country Reports on Human Rights Practices — 2004,” released Feb. 28, 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm>.

the drug trade or other lucrative but illegal activities, violent crime closely follows.¹⁶ Increasingly, federal authorities encounter violence in doing their jobs. And, each year, hundreds of illegal immigrants die attempting to cross the border in remote desert areas.¹⁷

The Financial Burdens on Taxpayers

With such a large number of illegal aliens in the United States, the taxpayers bear a heavy burden. The public costs are dramatic, especially in the areas of emergency medical care and the criminal justice system.

Emergency care expenses

Illegal immigrants seldom have health insurance, and instead tend to seek even the most routine medical care from hospital emergency rooms. A 2002 study of all 24 U.S. counties bordering Mexico found that hospitals provided \$190 million of uncompensated emergency medical care to undocumented immigrants in the year 2000.¹⁸ And, of course, illegal aliens do not all remain in border counties; they live in every state of the nation. Some experts have estimated that the nationwide emergency medical care obligation due to illegal aliens is \$1.45 billion per year.¹⁹ As discussed below (at p. 10), the federal government has provided a fraction of the reimbursement funding necessary to deal with these expenses.

Criminal justice expenses

The financial burden on federal and state resources due to criminal illegal aliens is substantial, and the partial reimbursement provided to states and counties by the federal State Criminal Aliens Assistance Program (SCAAP) for incarceration is paltry compared to sustained costs. Consider the following:

- At the federal level, the total number of civil immigration cases filed in the federal courts has increased by more than 500 percent since 1992.²⁰
- A 2001 study of the 24 counties along the U.S.-Mexico border found that the annual costs of prosecuting and incarcerating illegal aliens amounted to more than \$80 million — an average of 12 percent of *all* county public safety expenditures.²¹

¹⁶ In addition, approximately 250 illegal immigrants die every year near the border due to crime and the rough conditions along the Southwest border. See Congressional Research Service, “Border Security: the Role of the U.S. Border Patrol,” RL32562, Jan. 24, 2005, at 20-21.

¹⁷ See data from CBP, detailed in Press Release, May 6, 2004, available at http://www.customs.gov/xp/cgov/newsroom/press_releases/archives/2004_press_releases/05242004/05062004.xml.

¹⁸ See United States/Mexico Border Counties Coalition, “Medical Emergency: Costs of Uncompensated Health Care in Southwest Border Counties,” released Sept. 2002, available at http://www.bordercounties.org/index.asp?Type=B_BASIC&SEC={C90385BE-27F1-4E75-98F1-450DD3608069}.

¹⁹ Data from analysis performed by MTG Corporation for the Office of Senator Jon Kyl.

²⁰ See Letter from Ass’t Att’y Gen. Will Moschella to Senator Jon Kyl, Feb. 5, 2004, on file with the Senate Republican Policy Committee.

²¹ See United States/Mexico Border Counties Coalition, “Illegal Immigrants in U.S.-Mexico Border Counties: Costs of Law Enforcement, Criminal Justice, and Emergency Medical Services,” released Feb. 2001, available at http://www.bordercounties.org/index.asp?Type=B_BASIC&SEC={68617958-3779-44FD-AD87-137E89867203}.

- Those 2001 figures are quickly becoming outdated. The State of Arizona recently estimated that it has spent \$118 million since July 2003 to incarcerate illegal aliens — and that SCAAP funding compensates for only 10 percent of the total burden.²²
- The San Francisco County Sheriff's office reports that it receives about \$20 per day per inmate from the federal government; though the cost of incarcerating illegal aliens is roughly \$90 per day per inmate.²³

The consequences of these higher costs are lower-quality services and a higher tax burden for American citizens — including the *legal* immigrants who played by the rules to gain citizenship.

Some argue that these public costs are offset by the value that illegal immigrants provide to the U.S. economy. Illegal workers add to our nation's productivity by providing more labor at lower wage rates. This productivity gain is offset to some extent by public costs such as those identified above (as well as others, such as educational expenses for children of illegal aliens living in the United States). Employers, therefore, receive an implicit subsidy from taxpayers who are forced to pay these public costs. Obviously, the fact that there are benefits from illegal employment is not a rationale for the illegality, but a reason to find a way to allow the labor *within a legal construct*.

Many Alien Criminals Are Not Being Removed from the United States

While many illegal aliens do not commit additional crimes once they arrive in the United States, the problem of criminal illegal aliens cannot be ignored. The criminal alien population is substantial. For example, "in Los Angeles, 95 percent of all outstanding homicide warrants and 60 percent of outstanding felony warrants are for illegal aliens."²⁴ And the Department of Homeland Security further estimates that 80,000 criminal illegal aliens are present in the United States and *not in custody* due to having absconded after failing to appear for immigration deportation proceedings.²⁵

Overall Injury to the Rule of Law

Americans who daily witness the political and social impacts detailed above have become skeptical as to whether the United States is committed to upholding the law. Those who live in the Southwest especially are reminded of this lack of commitment every day when they see illegal aliens trespassing on their properties, crowding their children's classrooms, and competing with them for treatment in hospital emergency rooms — not to mention their daily presence on city streets as they look for day labor. For the most part, Americans treat these illegal aliens with respect, and they know that most cross the border seeking economic opportunity; but they also believe that our nation's laws must be respected. Few would dispute that a well-ordered society *must* secure its borders and enforce immigration laws in the workplace.

²² See Letter from Arizona Governor Janet Napolitano to Attorney General Alberto Gonzales, Feb. 3, 2005, on file with the Senate Republican Policy Committee.

²³ See Jennifer Nelson, *Feds should pay counties for illegal-immigrant inmates*, San Francisco Chronicle, Jan. 31, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/gate/archive/2005/01/31/jnelson.DTL>.

²⁴ Fox News, *Border states grapple with alien criminals*, Mar. 17, 2005, available at <http://www.foxnews.com/story/0,2933,150638,00.html>.

²⁵ See Press Release, Department of Homeland Security, *ICE expands pilot project to detain deportable aliens*, Mar. 26, 2004.

Those imperatives are not being met today. With at least 11 million aliens living illegally in the United States and illegal border crossings in the thousands every day, Americans can fairly ask: if Congress and the Administration will not provide the resources necessary to enforce immigration laws *today*, then will they enforce a new temporary worker program? Or, will a new temporary worker program merely attract more illegal immigration? What does it say about our nation's respect for the Rule of Law if we will not enforce the laws on the books, *especially* when those laws have such broad-based public support?²⁶ How can Americans be expected to support new immigration policies that ***expressly depend on*** tough border and interior enforcement when the federal government has failed to adequately enforce those laws to date?

How Government Can Demonstrate a Commitment to the Rule of Law

The problems identified above will not be solved overnight, and government need not put all immigration reforms on hold until they are. But the American people cannot be expected to support immigration reforms, especially those that create new temporary worker programs, if the government cannot show an ongoing commitment to enforce existing laws. Congress and the Administration each have important steps they can take to demonstrate that the Rule of Law is important, that immigration laws will be better enforced, and that heightened enforcement will not fall victim to lack of resources.

Make a Greater Financial Commitment to Border Security

Too many people operate under the mistaken belief that it is impossible to enforce immigration laws, and that, instead, the United States must resign itself to porous borders. This assumption — while sadly justified by past government failures — is nevertheless false. Government simply lacks the will to adequately address border security; instead it implicitly treats the degree of illegal entries as intractable, ***which it is not***, or as a labor necessity, which leads to the untenable position that our economy ***should*** depend on illegal labor. The federal government should make a firm commitment to enforce immigration laws, backing it up with concrete resources and political will. This commitment (not 100-percent immediate success) can lay the groundwork for immigration reform which, ***if enforced***, would help by eliminating the magnet for illegal immigration.

One obvious way to demonstrate a commitment to better border enforcement is simply to fund it. The President's FY 2006 budget request was disappointing in this regard. Although the Intelligence Reform bill passed in October 2004 called for 2,000 new border patrol agents, the Administration only sought funding for 210 agents. The Senate has taken steps to address this problem by passing a budget in March 2005 — moving funds from the Foreign Operations function to the Administration of Justice budget function with the intent of fully funding the 2,000 new agents.²⁷ This is a good start; but Congress must ensure that this increased funding remains in the final budget and that the appropriations process guarantees that all those dollars are spent on the new agents. Moreover, future-year requirements must likewise be included in the President's budget and funded by Congress.

In addition to new agents, our border patrol agency needs new equipment, updated technologies, and the cooperation of other federal agencies — not to mention cooperation from

²⁶ See, for example, poll of Arizona residents finding that 84 percent of respondents want more money spent on border enforcement, and 70 percent want more money spent on enforcing laws against hiring illegal aliens. *Grand Canyon State Poll*, Mar. 23-26, 2005, conducted by the Social Research Laboratory at Northern Arizona University.

²⁷ See S. Amend. 218, adopted Mar. 17, 2005, in relation to FY 2006 Budget Resolution.

state and local governments. The Administration has taken sound new steps recently with, for example, the expansion of the Arizona Border Control Initiative,²⁸ but additional efforts are clearly needed to secure our borders and slow the flow of illegal alien traffic.

Plot a Path for Better Enforcement of Immigration Laws in the Interior

It is not enough to increase border enforcement efforts. One of the greatest embarrassments to American immigration policy is the lack of political will to enforce laws against hiring illegal aliens *away from border areas* – or to remove illegal immigrants once apprehended in the “interior,” i.e., far away from where it is convenient to return them home. Instead, the federal government has largely treated immigration enforcement as an “either-or” proposition — border enforcement versus interior enforcement.

There can be little dispute that interior enforcement is paltry. Since 2001, the annual number of fines imposed on employers for illegal hiring fell to fewer than 100 — bottoming out at only 13 in 2002 — whereas, in the prior four years, the federal government averaged nearly 500 fines per year against employers.²⁹ And by example, while there are several hundred border patrol agents along the Arizona-Mexico border, there are only 12 Deportation Officers in Phoenix and 4 such officers in Tucson.³⁰ Employers and employees alike are not blind to these changes. The effect is that employers are able to hire illegal workers throughout the nation without a significant risk of enforcement, and so illegal aliens continue to cross the border.

The lack of enforcement in the interior has serious consequences for Americans’ respect for the Rule of Law. Employers often know (or certainly have reason to know) when they are hiring illegal workers. Employers sometimes point to the “documentation” they have received because counterfeit Social Security cards and driver’s licenses are so common. Fellow employees often know that their coworkers lack legal status. Customers of those businesses know that many of the people they encounter are in the country illegally. Citizens come to understand the fiction of it all: They do not see the laws enforced, and they have little reason to believe that the laws will be enforced in the future.

Interior enforcement is not impossible. Agricultural employers complain bitterly when federal agents do check their workers during the height of harvest season. It is a question of personnel and a clear commitment by the government to enforce these laws so that employers recognize that the implicit condoning of illegal hiring will no longer be tolerated. And to the extent that employers truly need foreign workers, as undoubtedly is the case, that merely substantiates the need for reform of the *law* — not perpetuation of illegal labor.

More can be done. The government can put more resources toward the removal of illegal aliens found in the nation’s interior — those who crossed into the U.S. illegally, as well as those who entered on temporary visas but overstayed. It can guarantee that criminal aliens who have served their sentences in U.S. prisons are promptly deported. And it can provide proper resources to clear the backlog of the more than 400,000 illegal aliens who have been ordered to leave the nation by an immigration judge after a thorough process, but who fail to depart when

²⁸ See Press Release, Department of Homeland Security, *DHS begins second phase of Arizona border effort*, Mar. 30, 2005, available at http://www.customs.gov/xp/cgov/newsroom/fact_sheets/fact_sheet_arizona.xml.

²⁹ See Office of Immigration Statistics, 2003 Yearbook of Immigration Statistics, Sept. 2004, available at <http://uscis.gov/graphics/shared/aboutus/statistics/2003Yearbook.pdf>.

³⁰ Data from Department of Homeland Security on file with the office of Senator Jon Kyl.

ordered.³¹ In short, it can make clear to Americans that the immigration laws *can* be enforced through effective action.

Congress should work with the Administration to provide the funding necessary to bolster interior enforcement of existing immigration laws. Without that increased funding — or reallocation of Department of Homeland Security resources, if feasible — citizens will grow increasingly cynical about the government's commitment to laws already on the books.

Increase Diplomatic Pressure on Mexico to Ensure Assistance

If the United States is to reduce illegal immigration, it must have the full cooperation of the Mexican government. Instead, Mexico has sent precisely the wrong signals.

Recent Comments by Mexican President Vicente Fox

Recent, unhelpful comments by Mexican President Vicente Fox present a real barrier to immigration reform. Consider:

- In a March 2005 interview, President Fox called U.S. border control efforts in San Diego and Texas “discriminatory” and expressed scorn for U.S. efforts to regularize its borders, characterizing border fences as “against freedom,” and declaring that “no country that is proud of itself should construct walls.”³²
- President Fox has said that those who wish to secure American borders are “minority, xenophobic, discriminatory groups” and has decried border fences in San Diego and parts of Texas.³³
- President Fox has downplayed the terrorist threat to the United States from its Southern border, stating: “We don’t have any evidence or any indication either that terrorists from al-Qaeda or from any other part of the world are coming into Mexico and going through to the United States.”³⁴

Moreover, the Mexican government recently decided to permit — and even encourage — illegal aliens living in the United States to vote absentee in Mexico’s national elections.³⁵ These are not the comments and actions of a country that respects its neighbor’s right to regularize immigration and control its borders.

The Mexican Government’s “How To” Comic Booklet for Illegal Aliens

The Mexican government’s ambiguous approach to illegal border traffic is perhaps exemplified by the recent “guide” produced by the Mexican Ministry of Foreign Relations to

³¹ Testimony of David Venturella, Former acting Director of the Office of Detention and Removal Operations, before the Senate Judiciary Subcommittee on Immigration, Apr. 14, 2005.

³² See James C. McKinley, Jr., *At Mexican Border, Tunnels, Vile River, Rusty Fence*, N.Y. Times, Mar. 23, 2005. See also Ruben J. Navarrette, Jr., *The problem we can fix*, San Diego Union-Tribune, Mar. 23, 2005.

³³ McKinley, *supra* note 32.

³⁴ Lennox Samuels, *Fox: Trade and Security, not Migration, Top Summit Issue*, Dallas Morning News, Mar. 17, 2005. (See above at page 3 for recent conviction of a Michigan man on terrorism-related charges who entered illegally from Mexico.)

³⁵ Ginger Thompson, *Mexico’s Migrants Profit From Dollars Sent Home*, New York Times, Feb. 23, 2005.

advise Mexicans of how to cross into the United States and live here without being deported.³⁶ It includes sections on navigating rivers, crossing the Southwest desert, dealing with human smugglers, and avoiding being identified and deported once in the United States. (As noted above, the State Department recently has described the ways in which some Mexican officials along the border assist Mexicans attempting to enter the United States illegally, often abusing or exploiting those migrants in the process.³⁷) According to news reports, the government has printed 1.5 million copies and distributed them as a free supplement to *El Libro Vaquero*, a popular cowboy comic book, in northern Mexico.³⁸ Although the last page of the “guide” states that it is not intended to promote illegal border crossings, the rest of the text plainly focuses on assisting Mexicans who have made that decision. Indeed, one Arizona family recently found an abandoned backpack on their property (apparently from a trespassing illegal alien) that contained a copy of this “how-to guide.”³⁹

The Mexican government is sending mixed messages both to the United States and to Mexican citizens who may be considering entering the United States illegally. The United States must maintain diplomatic pressure on Mexico to ensure that its “cooperation” is genuine, and that Mexico becomes a true partner in shutting down illegal border traffic.

Fully Compensate States and Counties for Hospital and Criminal Justice Expenses

As discussed above at page 5, state and local governments bear a substantial financial burden due to the emergency health care needs of illegal aliens and the criminal justice expenses associated with those aliens who become entangled with that system. Congress has provided some help to states in order to compensate for these burdens. The Medicare reform legislation of 2003 provided \$1 billion over four years to hospitals and physicians to compensate them for illegal aliens’ health care that is mandated by federal law. These monies pay only a fraction of the total burden created by the failure to adequately police the borders; but they are a start. Likewise, the SCAAP provides federal payments to states and counties for the costs of incarcerating illegal criminal aliens, although SCAAP funding last year was at only 20 cents on the dollar.⁴⁰ Congress should protect the SCAAP program from elimination (which the President’s FY 2006 budget proposes), and should, instead, increase funding — certainly beyond its historical average of only one-third of the costs.

Why Immigration Reform Depends on Better Enforcement

The above issues must be addressed regardless of whether Congress creates a new temporary worker program. National security and our nation’s commitment to the Rule of Law demand it. However, showing a commitment to these priorities is all the more important if Congress intends to proceed to any kind of immigration reform or temporary worker program. That is because any temporary worker program will itself require complete enforcement if it is

³⁶ See *Guia del Migrante Mexicano*, Secretaria de Relaciones Exteriores, available at <http://www.sre.gob.mx/tramites/consulares/guiamigrante/page1.htm>.

³⁷ See “Mexico: Country Reports on Human Rights Practices — 2004,” released Feb. 28, 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41767.htm>.

³⁸ See Chris Hawley, *Mexico publishes guide to assist border crossers*, Arizona Republic, Jan. 1, 2005.

³⁹ David B. Wood, *Border family’s strange encounters with illegal crossers*, Christian Science Monitor, Apr. 7, 2005, reprinted by ABCNews.com at <http://abcnews.go.com/International/CSM/story?id=647288>.

⁴⁰ The FY 2005 funding was \$305 million, versus the \$1.45 billion in annual expenses that hospitals incur for emergency medical care to illegal aliens. Data from analysis performed by MTG Corporation for the office of Senator Jon Kyl.

not to become yet another amnesty program that encourages further illegal immigration. To understand why quality enforcement is so central to any successful temporary worker program, consider the following four principles that, by necessity, must govern any such program:

- **Verifiable worker identification.** The current system is plagued with fraudulent and stolen Social Security cards and driver's licenses. No temporary worker program can succeed if employers cannot reliably identify those persons who are in the United States due to that program. That verification will require a reliable identification card for employment purposes so that employers can *know* that the person they hire is in the country legally.
- **Usability.** Any program must be extremely user-friendly so that employers and employees alike have a strong incentive to participate in the program. Otherwise, employers and employees alike will abandon the system in favor of an illegal job market. A successful program will require additional resources that the federal government has been unwilling to commit to existing guest worker programs.
- **Workplace enforcement.** Verifiable identification cards and administrative simplicity will provide the right incentives, but the government must be willing to devote the resources to conduct actual interior enforcement. Without regular audits of the program, including on-site visits, the program will lack integrity and will not be used because many employers and employees alike will decide that they are better off operating in an illegal labor market such as the one that exists today.
- **Securing the borders.** No temporary worker program can succeed if the borders are not secured. No matter how verifiable, usable, and enforced any program is, there will always be those who attempt to cross the border illegally and attempt to work outside the program for below-market wages. If illegal aliens are permitted to enter, it will be more difficult to keep employers in the guest worker program.

These necessary components of any temporary worker program all rely on a federal commitment to enforcement, which continues to be lacking. Furthermore, the additional resources are non-negotiable if reform is to have any chance of success.

Conclusion

The United States must demonstrate that it has the will and the ability to enforce today's immigration laws. Everyone involved — aspiring migrant workers, existing illegal aliens, current and potential employers, foreign, state, and local governments, and, of course, the rest of the American people — must see this commitment in action. It is essential to meet our responsibility to uphold the law and to recommit our nation to the Rule of Law in immigration matters, and it is critical if we are to establish the political basis for considering necessary immigration reforms.